

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 9, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: Sen. Dale Berry (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 347, 2/5/1999
SB 126, 2/5/1999
SB 123, 2/5/1999
SB 125, 2/5/1999
SB 389, 2/5/1999
Executive Action: None

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON SB 347

Sponsor: SENATOR BARRY "SPOOK" STANG, SD 36, ST. REGIS

Proponents: Claudia Clifford, Department of Insurance
Christian Mackay, MT Reinsurance Board

Opponents: None

Opening Statement by Sponsor:

SENATOR BARRY "SPOOK" STANG, SD 36, ST. REGIS. He presented his bill and handed in the written copy **EXHIBIT (bus32a01)**. He handed out a fact sheet **EXHIBIT (bus32a02)** and his amendments **EXHIBIT (bus32a03)** and said the Department of Insurance, State Auditor's office would speak to the amendments.

Proponents' Testimony:

Claudia Clifford, Department of Insurance. I was the staff person who helped put this program together when the legislature passed the Small Group Reform Act in 1993 and I have been with the Board ever since. A number of our programs through the Department of Insurance had to be looked at to see whether or not CI-75 had bearing on the program. In our opinion it could have bearing. There were issues to be debated; but rather than debate those issues and try to figure out a mechanism to make this program work under CI-75, the Board took the position to repeal the program. Primarily, the reason they decided to do that is because of the low usage of the program and the high administrative cost which was sent out to the insurance carriers. The Board has all the major small insurance carriers. They are the ones that this bill will affect the most. They are the ones that decided to repeal the program.

Christian Mackay, Board Member, MT Reinsurance Commission. The statute called for a member of the public employed by small business that was not involved in insurance. I was appointed by the Insurance Commissioner. I really don't have more to add than what has already been said. By passing this Senate bill, you will not be putting people out without insurance. People will still be covered. The reinsurance market is very competitive. Companies have been out there shopping. We ask you give this bill a Do Pass.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA asked **Claudia Clifford** that should CI-75 be overturned by the courts, would they still want to have this happen. **Ms. Clifford** said "yes," it would still be the

recommendation of the Board to repeal the program. It has not served much of a purpose for the carriers.

SEN. MIKE SPRAGUE asked **Ms. Clifford** if it hasn't served a purpose, then why did we do it in the first place; or is it a case of having the program but not promoting the program like it should have been. **Ms. Clifford** said that when this legislation was brought to the legislature it was going to reform all the rules around the small group market. Carriers were nervous about having to guarantee issue coverage. If one applied you were guaranteed to be issued that coverage. Part of the model act that was originally written by the National Association of Insurance Commissioners had this concept of having reinsurance available to the carriers so that they would have a safety net to be able to say "I think I have a high risk in writing this group so am I going to feed that high risk or buy reinsurance on that particular group." The Department did market to the small group carriers. They were sent all the materials they needed. Some states have a lot of activity and some don't. Why this happens has not been explained.

SEN. SPRAGUE asked **Riley Johnson** if National Federation of Independent Business was knowledgeable about this kind of an opportunity for small business and if so how did it filter to the small business. **Mr. Johnson** replied that he was aware of the reinsurance availability, but he was not sure that the average small business was particularly aware of the reinsurance thing at all. **SEN. SPRAGUE** then asked if it wasn't marketed, would it fail. **Mr. Johnson** said he didn't think he could answer that question.

Closing by Sponsor:

SEN. STANG closed. The program hasn't been used very much. There is availability of reinsurance out there with other companies. This bill addresses insurance carriers and not small businesses. Thank you.

{Tape : 1; Side : A; Approx. Time Counter : 10.5}

HEARING ON SB 126; SB 123; SB 125

Sponsor: SENATOR WILLIAM S. "BILL" CRISMORE, SD 41, LIBBY

Proponents: Jon Dilliard, MT Department of Environmental Quality

REP. SCOTT ORR, HD 82, LIBBY
John Ward, Little John's Septic Service

Opponents: None

Opening Statement by Sponsor:

SENATOR WILLIAM S. "BILL" CRISMORE, SD 41, LIBBY. As you may remember, we were not prepared to present **SB 126, SB 123 and SB 125**. Since that time, the Department of Environmental Quality and the pumpers have met and gone over the bills. There are amendments for the three bills that the Department will speak to. Thank you for giving us the opportunity to work this all out and come before you with a good bill. To make things clear, **SB 123 and SB 125** are bills that are necessary to put **SB 126** on the ballot. If you pass **SB 126** out of committee, then **SB 123 and SB 125** must pass.

Proponents' Testimony:

Jon Dilliard, Chief, Community Services Bureau, Department of Environmental Equality. He gave his testimony and handed in a written copy **EXHIBIT (bus32a04)**. He gave a summary of **SB 126** and handed out a fact sheet **EXHIBIT (bus32a05)**. He then explained all the amendments that went on **SB 126 EXHIBIT (bus32a06)** on **SB 123 EXHIBIT (bus32a07)** and on **SB 125 EXHIBIT (bus32a08)**.

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REP. SCOTT ORR, HD 82, LIBBY. My comments address all three bills. I would like to apologize to the Department. When I testified the first time, I said that the Department had held a hearing and I was disappointed they hadn't worked with the committee members. Well, it was the wrong Department. That is why the pumpers weren't notified. All that has been rectified. They have had two meetings which I have attended with Director Simonich. The amendments that are before you now certainly are a consensus. Should you see fit to pass these three bills out of committee, I have agreed to carry these bills in the House.

John Ward, Little John's Septic Service. As a result of all that has happened, I am now the Vice-President of the newly organized pumpers organization. Mr. Burns in the northwest corner in Superior is the President. The Department contacted every licenced pumper in the state and were invited to the two meetings. The first meeting was a bit volatile because they were hearing things for the first time. The second meeting was a line by line, go through the bill, and work out a bill. The pumpers

who choose to attend do represent the pumpers of the state and are in support of this bill as amended.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR VICKI COCCHIARELLA congratulated the group on coming together and making this a good bill.

Closing by Sponsor:

SEN. CRISMORE closed. Thank you very much for your help and the good hearing. I hope that you do pass all three bills.

{Tape : 1; Side : A; Approx. Time Counter : 28}

HEARING ON SB 389

Sponsor: SENATOR JON ELLINGSON, SD 33, MISSOULA

Proponents: Glenn Gregor, Accident Victim
 Stephen White, Great Falls, Accident Victim
 Georgena Compton, Accident Victim
 Pam Egan, Testifier for Nathan
 Rick McQuen, Accident Victim
 Paul Farris, Accident Victim
 Don Judge, AFL/CIO
 Al Smith, MT Trial Lawyers
 Ray Lincoln, Machinists Union

Opponents: Nancy Butler, MT State Fund
 Jacqueline Lenmark, American Insurance Assoc.
 Bob Worthington, MMIA
 Tom Kiely, Montana Power Co.
 Marilyn Nelson, MT ?? Comp Fund
 Colleen Graham, MT School Board Assoc.
 Webb Brown, MT Chamber of Commerce
 Russ Ritter, Washington Corporation
 Gary Weams, MT Electric Cooperatives
 Jane McCall, City of Billings
 Charles Brooks, Billings Chamber of Commerce
 Riley Johnson, National Federation of Independent
 Business
 George Wood, MT Self Insurers Assoc.

**Informational Testimony: Stan Kaleczyc, National Council on
Compensation Insurance, Inc.**

Opening Statement by Sponsor:

SENATOR JON ELLINGSON, SD 33, MISSOULA. The theme of this could be characterized with "we've gone too far." For a decade our Workers Compensation system was in crisis, our State Fund was mismanaged and our benefit structure too costly. Progress has been made; management is undeniably more efficient and professional, and rates have decreased. But we've gone too far in cutting benefits to workers and **SB 389** addresses this issue. How do we know we've gone too far? Workers Compensation is a no-fault system of compensation for workers injured on the job. A worker is denied his or her right to full compensation for injuries; in exchange for giving up this right, the worker is relieved of the burden of proving employer fault. The employer also gains -- the costs are fixed and the employer may not be sued for pain and suffering or full economic losses. This arises because of the exclusivity of the Workers Compensation remedy. However, the bargain between employer and employee fails if the remedies provided to the workers are inadequate and we are now approaching that point.

Facts: Montana's average settlement for pre-1987 claims was about \$35,000; however, claims arising from the 1995-97 laws were settled for an average of \$10,000. Another way of looking at it was a fairly typical settlement under the 1989 law for someone who had a 5% impairment rating (earning \$10/hour but only able to return to a \$6/hour job) had a settlement of about \$55,000; under current law that individual would be entitled to only about \$19,000. This committee needs to grapple with the question whether current benefits are adequate to support the bargain which gives benefits to business of the exclusivity remedy. I think it does not. We can look for comparisons among our western neighbors, most of which permit benefits or permanent partial disability (a major part of the workers compensation component) to last longer than Montana does and every state except one has a higher level of benefits. We have simply "gone too far" and our hard-working Montana workers are suffering.

Page 1 of **SB 389** strikes the cap upon temporary total disability benefits. Current law says the benefits may not exceed the state's average weekly wage at the time of injury; however, we suggest it is equitable to remove the cap. The reason for this is the cap works to the detriment of the higher paid workers because their fixed costs are higher and remain after the injury; yet, they can receive no more than about \$396 per week. **Pages 2-4** deal with permanent partial disability -- the first change is

on **Page 2**. We suggest it is equitable to eliminate the requirement of an actual wage loss as the result of the injury. Requiring the actual wage loss works to the detriment of the worker because he may be able to return to the same job he had at the same rate of pay but lost his earning capacity and ability to earn at a greater rate. An example would be a college student who was seriously injured on the summer job which would impair his future earning capacity; however, he would be able to return to his temporary summer job, i.e. there would be no permanent benefit under permanent partial disability. I want to remind the committee actual wage loss remains a factor in determining the permanent partial disability benefit. **Page 3** urges the committee to extend the permanent partial disability award from 350 to 500 weeks -- Idaho is 500, New Mexico is 750 and California is at the 694 week level. Why should Montana be at the bottom? The readings for permanent partial disability benefits are altered to benefit the workers under the suggested changed provisions. Suppose the worker is 20 years old, is a high school graduate and has no actual wage loss and can return to his life work's job, i.e. this worker is entitled to no permanent partial disability regardless of the impact of his injury on his earning capacity. It makes no sense to deny such a worker compensation if he has his earning capacity substantially impaired. **Page 5** gets into issues of rehabilitation of an injured worker and we are uncomfortable with current law which allows a rehabilitation provider be designated by the insurer. It gives too much power to the insurer as an economic interest in making certain rehabilitation program lasts as short a period as possible. We think that is more appropriately left to the hands of the injured workers. **Page 6** eliminates the requirement of an actual wage loss before a worker is entitled to rehabilitation services because an individual who has no wage loss but has lost substantial earning capacity should be entitled to rehabilitation benefits. I hope you listen carefully to the stories of these injured workers who are now suffering because of current law.

{Tape : 1; Side : A; Approx. Time Counter : 42.5}

Proponents' Testimony:

Glenn Gregor, Laborer in Construction Industry. In 1992 I broke my ankle on the job and had to go on Workers' Compensation. The construction business is seasonal work and sometimes part-time. When I was hurt it was winter and I was part-time shoveling snow for the State and drawing partial unemployment insurance. Workers' Compensation only counted my part-time earnings instead of looking at my real earnings history. As a result my compensation was only \$26 a week and I couldn't draw any unemployment. I had to get a lawyer to prove my earnings were

more than just part-time and my case was finally proved, which got my earnings up to \$168 a week; yet after paying lawyer's fees, I was still getting less than what I would have drawn from unemployment. The result of all this was I had to go on welfare -- I had been working and paying taxes since I was a teenager. I thought I would be taken care of by Workers' Compensation insurance but it wasn't true. My brother and I were buying a piece of property together but we lost it because I could no longer make the payments. Last year I got hurt on the job again -- I broke my wrist. This time they started to undercount my earnings again but backed off when I said I had talked to a lawyer. Even though they gave me the maximum allowed, it still was only \$70 a week less than my take-home pay. Not only that, I was losing pension and welfare contributions to my vacation savings account and other benefits. We have 5 children and if I didn't have a union health insurance program with an hour bank, my whole family would have been without health insurance. As it was, because Workers' Compensation benefits were so low, we had to go on food stamps. I can't believe a person can work hard all his or her life, be covered by Workers' Compensation and still have to go on public assistance when hurt. Vote Yes on **SB 389**.

{Tape : 1; Side : B; Approx. Time Counter : 0}

(Mr. Gregor distributed copies of **EXHIBIT (bus32a09)** to the Committee).

Steven White, Private Citizen, Great Falls. In March, 1994, I was working for a roofer when I slid off the roof and crushed both feet. The doctor said he was afraid I would never walk again. I was 40 years old, and used to earning \$20 to \$30,000 per year. About four months after the injury vocational rehabilitation showed up, even though I hadn't been released by my doctor, and asked about retraining. I said I could hardly stand so I wasn't ready. I had to get a lawyer because I had nothing else to do. Since that injury, I've had multiple surgeries, and an infection in one foot that lasted for years but never went away. After doctors prodded and poked, they finally suggested one foot be amputated. I agreed because the pain was that great; however, I still have severe pain. I have about half feeling and balance in my left foot and when I do walk (a short distance is all I can do) I have to use a cane for balance. According to Black's Law Dictionary, I am totally disabled at 45 years old; however, Workers' Compensation laws are different. It seems you have to be dead to be totally disabled. As a result of my injury I got a total physical impairment rating of 41%. Because I was injured in 1994 under the 1992 laws, they take 28% X 350 weeks X half the state's actual average wages, which is 28% X \$181 X 350 and it equals \$17,738 for my amputated foot.

However, I lost \$3,548 because I had to pay the lawyer 20%. I'm the vice president of Montana Injured Workers Resource Council and we're volunteers trying to help people understand some of the benefits they should be getting when someone is injured on the job. I don't foresee anything being done to help us who have already been injured on the job -- we're just here because of the goodness of our heart to see that other people in the future don't get "taken to the cleaners." I consider myself borderline totally disabled, Workers' Compensation has just about forced me to take a rehab program for two years of college school, which I don't know if I'll be able to take; however, I will try. After that it's up to me to provide for my family and retirement for the rest of my years. A lot of people are upset. I found this article in the Great Falls "Tribune" and it says "State Fund Executives Get \$72,000 In Raises." The article goes on to say other executives in the State Fund got other bonuses and the Fund has \$159 million in reserves, which were a result of decreased benefits to an injured worker. I don't believe anybody asked to get injured on the job; rather, if they had known how degrading the benefits were, they would probably have tried to hide their injury. Workers in Montana is a consequence of suppressed wages and being treated like a disposable commodity at the expense of corporate profits and increased bonuses for administrators. I've been told by people in the industry the State Fund had to abide by the law and take what the legislature tells them; it won't change until legislators themselves, their relatives very close friends get injured -- apparently it hasn't yet happened.

My situation is one of the exceptions, not necessarily the rule, but I still got the "short end of the stick" partly because there was a no-fault clause in the law, i.e. no matter how the injury happened, the employee cannot sue the employer for anything. As a result of my total physical disability of 41%, I got a total of about \$26,000 for my injuries for the rest of my life. I am opposed to some of the way the Workers' Compensation fund is spending its excess money. I understand they have fortified their building like Fort Knox, have huge color monitors on their computers and give out huge bonuses.

I want to remind you that people work all over the State and not everybody wants to get injured but when something happens, that person and family really suffers. It's a real life change. I ask you to support **SB 389**.

{Tape : 1; Side : B; Approx. Time Counter : 9.4}

Gena Compton, Private Citizen. She read her written testimony **EXHIBIT (bus32a10)** and distributed copies of **EXHIBIT (bus32a11)**.

Pam Egan, Private Citizen. She read her written testimony **EXHIBIT (bus32a12)** and distributed copies of **EXHIBIT (bus32a13)**.

Paul Farris, Private Citizen. I was injured on the job a year ago this month and have been refused medical treatment or compensation. It's been a year of a living nightmare.

{Tape : 1; Side : B; Approx. Time Counter : 18.4}

Don Judge, AFL/CIO. I'll quote from a publication from the Department of Labor and Industry issued just this year, "This is the second complete year data has been compiled and the first time comparisons are possible for many areas. The provision available shows the Workers' Compensation system is healthy. More insurers are writing Montana Workers' Compensation policies, employers are paying less for premiums, injuries occurring on the job have stabilized, wage losses paid out has decreased, medical benefits have leveled off and attorney representation has remained consistent." What they didn't say is even though the payroll for the State of Montana has increased substantially over that period of time, the number of injuries and wage loss injuries has gone down. That doesn't make any sense because if there are more employees working, there are going to be more accidents. Why are the wage loss injuries down? The Workers' Compensation system in Montana has gone too far. When we instituted the language that said you had to show a wage loss before you could access permanent partial or rehabilitation benefits we cut 66% of the injured workers out from beneath those benefits. How do we compare in the region? Montana pays \$199 maximum permanent partial disability benefits; Arizona -- \$485; Colorado -- \$507; Idaho -- \$245; New Mexico -- \$375; Oregon -- \$244; South Dakota -- \$386; Utah -- \$320. How does Montana compare with the rest of the country? In 1998, it was the 10th lowest in maximum benefit per week for temporary total disabilities. I will distribute copies of additional testimony **EXHIBIT (bus32a14)** and **EXHIBIT (bus32a15)**. I will also read testimony of three other folks who were never paid for travel and other expenses. Since we initiated the Injured Workers Committee, the phone has been "ringing off the hook" by injured workers calling because they were abused by the system. In terms of this legislation, I will give you comparison data **EXHIBIT (bus32a16)**. How is the insurance industry in Montana doing? The 1997 profitability report shows that Montana isn't doing too badly -- the return of net worth was 11.7% while at the same time there are reports of injuries going down. However, we can tell you horror stories of injuries not being reported because of attempts by employers and insurance companies to deny the claims. The National Council on Compensation Insurance, Inc., NCCI, is projecting this bill would cost 55% increase in

Workers' Compensation costs; however, we don't believe that is necessarily the case. We encourage you to give this bill as amended a DO PASS recommendation.

Al Smith, Montana Trial Lawyers Association. The injured workers you've heard from today are not unique -- we see people like this in our offices every day. This bill doesn't help the people who are already injured because their benefits are limited to those provided in the statutes at the time of their injury. These folks before you today were treated so badly by the system they want to ensure it doesn't happen to anyone else. We urge you to read the letters that were distributed and give this bill a DO PASS.

Ray Lincoln, Machinists Union. We negotiate good wages and benefits and when a worker is hurt, there's nothing there for him. I ask you to pass this bill.

{Tape : 1; Side : B; Approx. Time Counter : 26.8}

Opponents' Testimony:

Nancy Butler, Montana State Fund. She read her written testimony **EXHIBIT (bus32a17)** and distributed copies of **EXHIBIT (bus32a18)**.

Jacqueline Lenmark, American Insurance Association (AIA). AIA urges this committee to oppose this legislation and give **SB 389** a DO NOT PASS recommendation. You have just listened to some isolated and very compelling stories. It is difficult to listen to those stories and think about the circumstances presented. When Mr. White was testifying he said an injured worker couldn't sue the employer and that is true; however, one of the very positive benefits of the Workers' Compensation act is the injured worker doesn't have to sue the employer or prove negligence before recovering damages. Also, the injured worker doesn't have to subtract away an award, damages that might be associated with employee negligence. In Workers' Compensation when a worker is injured, there is an automatic benefit that comes to the worker; in truth, that benefit may be less than a worker might receive in the court system -- or it could be significantly greater. I'd like the committee to keep that perspective in mind as you analyze this piece of legislation. Typically, AIA doesn't take an active role in advising the legislature about benefits; rather, it's our position that the benefit system chosen by Montana is a public policy decision for this State. We, as an insurance company, may decide what benefits we want to reserve for employees who are injured on the job.

I comment on this bill because of the conundrum effect it will have on our system. Mr. Judge was correct in that the preliminary pricing of the bill indicates a 55% rate increase; however, let me tell you which components NCCI priced -- eliminating temporary total maximum of 100% of the State's average weekly wage; increasing the number of weeks for permanent partial disability (PPD) from 350 to 500; increasing the age factors for PPD; increasing the education factor for PPD; increasing the physical strength factor for PPD and eliminating the PPD maximum of 50%. They didn't see the version of the bill before you but an earlier draft. They didn't price eliminating the criteria for PPD awards, including a wage loss; extending the rehab plan benefits from 104 weeks to 208 weeks; eliminating requirements for the use of authorized rehabilitation providers. So the 55% may not be accurate. The price differential may pose an increase greater than the 55%. The Workers' Compensation act requires the law in effect at the time of injury is the law that is applied to the injury in determining what the worker's awards will be. This proposed legislation takes the law back to what it was in 1987, before Montana started looking at Workers' Compensation reforms. One of the things that keeps Workers' Compensation rates down is stability of the system. AIA doesn't recommend benefit considerations but continually modifying benefits will cost Montana money. Idaho has a fairly stable Workers' Compensation system because their law rarely changes -- that costs them less money. A stable system with fewer benefit changes increases competition, allows rates to decrease and keeps litigation costs down.

What does this bill mean to my companies? This return to 1987 standards will send a message to them of volatility in Montana's Workers' Compensation system, their need to evaluate the Montana market to determine whether they want to continue to write coverage for Montana. I urge you to consider preserving stability of the system because it preserves competition and the ability of the system to deliver deserving benefits to injured workers. We urge you to give you a DO NOT PASS recommendation. I have a copy of a letter given me **EXHIBIT (bus32a19)**.

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Bob Worthington, Montana Municipal Insurance Authority (MMIA).
He read his written testimony **EXHIBIT (bus32a20)**.

Tom Kiely, Montana Power. I'm here to express my opposition for **SB 389**. I ask the committee to consider the economic impact to Montana business. I have concerns over the bill in its entirety, but there two areas that are of special concern: (1) For a company such as Montana Power that pays a very high wage rate,

the elimination of the average weekly wage is a cap to temporary total disability benefits and an increase of 50%. Similarly, an increase to PPD benefits is 199%. Overall, the increase in cost to MPC will be anywhere from the 55% to 75%. In our new competitive environment, this increase is ominous, at best. MPC is opposed to the bill.

Marilyn Nelson, Montana Contractors Compensation Fund. We are in opposition of this bill because we have all high wage earners and the cost of the bill would be prohibitive. In the past year, we paid approximately \$1.4 million in benefits and we believe our costs would be increased by up to \$600,000. I am in complete with what **Mr. Kiely** had to say.

Colleen Graham, Montana School Boards Association. On behalf of our school district trustee members, I am here to register opposition to **SB 389** because it will result in extra costs to school districts.

Webb Brown, Montana Chamber of Commerce and Montana Auto Dealers Association. We have gone too far in reforming and healing the system to make it stable in order to turn back now. We need to look at the effect on the employers who don't want to see any injuries either. We urge you to not expand the system or break it -- we urge DO NOT PASS for the bill.

Russ Ritter, Washington Corporation. The numbers stated by earlier testimony are not quite the same ones we have -- we came up with about 46%. When the reform legislation was passed a few years ago, our company began to emphasize safety because the pay-off for that is people can keep working on the job, perhaps the job can be finished earlier than originally intended or the profitability will be more for the company which will enable hiring more workers. Also, the fixed costs will be more controllable. This bill will not allow those fixed costs. On behalf of our company, I oppose this legislation for the reasons I've stated.

Gary Wiens, Montana Electric Cooperatives Association and Montana Electric and Telephone Self-Insured Workers' Compensation Pool. These two companies serve approximately one half of Montana's population, have employees exceeding 1,100 and have a total payroll exceeding \$30 million. Because of the important economic role we play, this bill could cause significant economic harm in rural Montana. By removing the cap on weekly compensation benefits, this bill will penalize co-ops and their subsidiaries for providing higher paying jobs in the rural areas. We ask for a DO NOT PASS.

Jani McCall, City of Billings. The annual premium for the city of Billings is \$702,000 for Workers' Compensation. If this bill passes, there will be an increase of at least 50%, which means at least \$400,000 will have to be added to the budget. Mark Watson, City Planner, said if this would happen, the only way it could be paid was to lay off city workers. This bill is very difficult because these individuals do need benefits. We would ask that you would oppose the bill.

{Tape : 2; Side : A; Approx. Time Counter : 8.2}

Charles Brooks, Billings Chamber of Commerce. We estimate our members would increase their premiums in the neighborhood of 50%. We have seen the Workers' Compensation fund come from a \$500 million deficit to where it is substantially whole today. We must not go back to those periods of deficit spending. I would urge you to take a look. I feel in anything we do there must be a balance. I think this bill goes too far. I urge you to carefully evaluate it because we must keep the State Fund as the insurer of last resort -- we must keep it sound financially, urge it to take care of the injured workers and encourage it to continue their very aggressive safety program. I urge you this bill should not pass in its current form.

Riley Johnson, National Federation of Independent Business (NFIB). When I checked with the State Fund, I found our rates had declined almost 40% in the last few years but we still were at 160% of the rates charged in the region, i.e. we are still a high-rate state. About half our members are with the State Fund and we also have a small group program. Our premium is 6.314, or \$6.3 million for the group. If the NCCI estimates are true, it will take our small employers from \$6.3 million to \$9.76 million. We can't afford it.

George Wood, Montana Self Insurers Association. The 55% cost computed by NCCI doesn't reflect the amount of the cost to self-insurers, since we have a different proportion of high wage employees than they do in Plan 2 and Plan 3. So I think the cost is somewhat in excess of 55%. After listening to previous testimony, it appears the bill would increase premiums about \$90 million. Ours would go up somewhere around \$15 million. It will mean a great deal of money for Montana employers. I respectfully ask you to TABLE this bill.

Informational Testimony:

Stan Kaleczyc, National Council on Compensation Insurance, Inc. (NCCI). The NCCI is a statistical rate-gathering organization, is licensed by the Department of Insurance Institute to gather

Workers' Compensation insurance information in Montana as well as in 38 other states. It has developed a Montana database, taking into consideration detailed information on claims, claims history and incidence of injury. The NCCI must annually file with the Department of Insurance an actuarial report called a Lost Cost Report, i.e. we suggest rates that are binding on Plan 2 to insurance carriers based upon historical claims data. Lost Cost data looks purely at the losses -- it doesn't consider overhead, profits or premium factors that a Plan 2 insurance carrier has to pay. It files with the insurance department what the rates ought to be, given the historical costs of Workers' Compensation benefits in Montana. The NCCI also has its actuary look at bills and says if a certain bill had been in effect, and given a recent claims year history, indicates how would the claims and benefits have changed. The results, without considering the rehabilitation costs and if this bill had been in effect over the past couple of years, would have been rate increases of 55%. The rehabilitation information can be developed and if it is, it will affect only this bill as introduced. The NCCI doesn't take a position of whether or not **SB 389** ought to be adopted, tabled or modified in some respect. Our role is to provide statistical information and analysis of what effect this bill would have on the Workers' Compensation system. If this committee decides to amend this bill, NCCI is prepared to price that one as well and provide you with the best information available.

{Tape : 2; Side : A; Approx. Time Counter : 16.2}

Questions from Committee Members and Responses:

SEN. FRED THOMAS asked how Montana compared on premiums charged. **Nancy Butler** said in July, 1998, Montana's rates were 195% of the states in the region.

SEN. THOMAS commented it did not include Alaska, whose rates and benefits were extremely high. **Ms. Butler** said in 1995, Montana was the highest in the nation.

SEN. THOMAS asked how high rates were reconciled to low benefits, as in some cases. **Nancy Butler** said Montana paid 155% more in permanent partial benefits than the states around us and that's why the rates are high. However, in individual workers, Montana is at 86%, or slightly below the national average. But if you look at frequency of workers accessing those benefits, Montana has twice as many accessing PPD benefits as states around us.

SEN. THOMAS asked the reason and **Ms. Butler** said a lot was driven by demographics -- there were very few people per square mile as compared to other states, fewer metropolitan areas and higher

incidence of high-risk industries (mining, logging, agriculture). A worker could be working in one of those industries and perhaps pays a higher wage and he or she is injured and they try to replace that wage, it isn't available because of the absence of opportunities.

SEN. GLENN ROUSH asked if the State Fund allowed travel and lodging expenses in the rehabilitation costs. **Nancy Butler** said there was a maximum of \$4,000 for implementing a rehabilitation plan which may allow some travel.

SEN. ROUSH said there was testimony which said there was very little financial help for travel and lodging. Since we are such a rural state and the injured workers might have to travel a great distance to get rehabilitative help. He asked if these people weren't entitled help. **Ms. Butler** said they followed the law as passed in 1995 -- the insurer was responsible for reimbursing travel which was at the request of the insurer. The Department of Labor defined "request of the insurer" as being referred to a managed care organization, preferred provider organization or independent medical examination. There would be instances if a worker would stay with his or her treating physician and if the insurer allowed that, travel would not be paid.

SEN. ROUSH asked about the 55% rate raise. **Don Judge** said NCCI was an insurance-funded organization, i.e. a "fox in the chicken coop." However, we don't disagree entirely with their numbers because when benefits are increased, costs have to be also. The truth is injured workers are paying the price. Montana premiums have declined in excess of 50% since 1993. We think the system has gone out of balance and needs to be quid pro quo back to the point where Montana doesn't risk the loss of the system, like we did when we excluded stress; the Supreme Court said it wasn't covered -- sue your employer. When the Court issued that decision, they also said there needed to be a quid pro quo and we're here to say the quid pro quo is gone.

{Tape : 2; Side : A; Approx. Time Counter : 25.2}

SEN. MIKE SPRAGUE asked **Pam Egan** what she did and was told she was a disability specialist with AFL/CIO.

SEN. SPRAGUE asked if Nathan in that situation would have been able to prove there was employer negligence. **Pam Egan** said she didn't want to speculate on that because I wasn't there.

SEN. SPRAGUE asked if the uncle (his employer) felt responsible in some way. **Ms. Egan** said when they were talking about the

testimony the previous evening, he said he would give everything he had and to me that's a feeling of being responsible.

SEN. SPRAGUE asked what settlement would have been fair. **Pam Egan** said his employer was hoping for something in the neighborhood of \$100-\$200,000.

SEN. THOMAS told **Stan Kaleczyc** he wasn't the "fox guarding the hen house"; rather, it was he, **SEN. THOMAS**. He asked him to address the fact he had a stake in this. **Stan Kaleczyc** said NCCI was a statistical reporting organization -- Mr. Judge is correct in that NCCI members are of the insurance industry, both to insurers and State Funds. Mr. Judge contacted NCCI and asked for the pricing information, as did the insurance industry; we gave both the same information. The role of NCCI is not to make judgments as to whether there should or should not be benefit increases or decreases; rather, it is to explain the impacts of either. We are regulated and licensed by the Department of Insurance -- those annual Lost Cost reports that are filed with the Department are reviewed by their own actuaries.

SEN. THOMAS asked if there was any other rating documentation to the contrary of 55%. **SEN. ELLINGSON** said he didn't; however, he knew they had to look at costs.

SEN. THOMAS said Montana was already paying the highest amounts, was there any difference in the reconciliation. **SEN. ELLINGSON** said they had already started the discussion which revealed the complexity in Workers' Compensation; on the one hand we're the highest but on the other hand, this is a NCCI document that demonstrates the Montana is lowest in terms of benefits. One reconciling factor is Montana has traditionally had a number of high-risk jobs; another is the geography which will probably mean Montana will always be higher in providing decent Workers' Compensation. However, just because Montana is at the highest rate right now doesn't mean we ought to be lowest in terms of benefits.

{Tape : 2; Side : A; Approx. Time Counter : 33.1}

Closing by Sponsor:

SEN. JON ELLINGSON. I want to thank the proponents for sharing their stories as well as the opponents who offered testimony which will have to be considered in the bill's final resolution. I hope we have begun a discussion and developed a new appreciation for the kinds of issues that are facing the workers of this state. It is anomalous that Workers' Compensation rates continue to be high; however, don't let that lead you to ignore

the fact we are the lowest among our neighboring states. I suggest this is not right. We can't create a positive business environment in this state if we are basing our competitiveness upon the backs of the workers who are not adequately compensated. It's a question of balance but why must the level of balance be retained at the bottom. Idaho provides for 500 weeks for PPD and its maximum benefit is almost 50% higher than we are. Our workers must be adequately compensated for their industrial accidents because it is our obligation and the right thing to do. Also, if we don't our Workers' Compensation system will be subjected to legal challenge, which will work not only to the detriment of workers but also that of businesses. Recent Workers' Compensation changes have gone too far. Please restore them appropriately and consider this problem. Both the proponents and I as a sponsor are willing to work with the Committee regarding amendments so we can achieve the goal we all share -- not treat injured Montana workers with the least favorable benefits of any of the neighboring states.

ADJOURNMENT

Adjournment: 11:30 A.M.

SEN. JOHN HERTEL, Chairman

MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT (bus32aad)